

No. \_\_\_\_\_

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**IN THE SUPREME COURT  
OF THE UNITED STATES OF AMERICA**

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**Kevin Tyrell Beach**

*Petitioner,*

**vs.**

**State of Florida,**

*Respondent.*

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Appendix to Petition for a Writ of Certiorari to  
the Supreme Court of Florida

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**APPENDIX TO PETITION FOR WRIT OF CERTIORARI  
AND  
ANY OTHER RELIEF DEEMED NECESSARY AND PROPER**

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Kevin Tyrell Beach  
Petitioner  
2092 Champions Way  
North Lauderdale, FL 33068  
Tel.: 954-210-2008  
Email: beachkevin10@yahoo.com

- 
- 1) Petition for Writ of Certiorari filed on June 7<sup>th</sup>, 2021.
  - 2) Jurisdiction for the United States is noted to have invoked on May 6<sup>th</sup>, 2021.

**INDEX OF THE APPENDIX**

<b><u>Record Citation</u></b>	<b><u>Description</u></b>
Pages: <b>1a</b>	<b>Exhibit 1:</b> Florida Supreme Court Order Denying Relief ( <i>May 6<sup>th</sup>, 2021</i> )
Pages: <b>2a</b>	<b>Exhibit 2:</b> Florida 4 <sup>th</sup> District Court of Appeals Order Denying Rehearing ( <i>March 18<sup>th</sup>, 2021</i> )
Pages: <b>3a</b>	<b>Exhibit 3:</b> Florida's 4 <sup>th</sup> District Court of Appeals Order Dismissing/ Denying Relief ( <i>February 16<sup>th</sup>, 2021</i> )
Pages: <b>4a</b>	<b>Exhibit 4:</b> Florida's 17 <sup>th</sup> Judicial Circuit, Broward County Court Order of Mistrial ( <i>March 20<sup>th</sup>, 2019</i> )
Pages: <b>5a-25a</b>	<b>Exhibit 5:</b> Petitioner's Writ of Prohibition for Florida's Fourth District Court of Appeals (21 pages filed on: January 22 <sup>nd</sup> , 2021)
Pages: <b>26a-43a</b>	<b>Exhibit 6:</b> Petitioner's Appendix to Writ of Prohibition for Florida's Fourth District Court of Appeals (18 pages filed on: <i>January 22<sup>nd</sup>, 2021</i> )
Pages: <b>44a-99a</b>	<b>Exhibit 7:</b> Petitioner's Motion for Rehearing in Florida's Fourth District Court of Appeals (56 pages filed on: <i>February 22<sup>nd</sup>, 2021</i> )
Pages: <b>100a- 138a</b>	<b>Exhibit 8:</b> Petitioner's Writ of Certiorari in Florida Supreme Court (39 pages filed on: <i>April 7<sup>th</sup>, 2021</i> )

# Supreme Court of Florida

THURSDAY, MAY 6, 2021

**CASE NO.: SC21-515**

Lower Tribunal No(s).:

4D21-546; 4D21-663; 062018MM002120A88820;  
18002120MM10A; 062021CA000127AXXXCE

KEVIN TYRELL BEACH

vs. STATE OF FLORIDA

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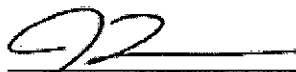
Petitioner(s)

Respondent(s)

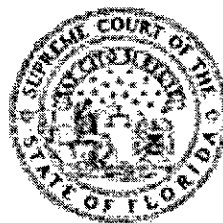
The petition for a writ of mandamus is hereby dismissed.  
*See Mathews v. Crews*, 132 So. 3d 776 (Fla. 2014). Any motions or  
other requests for relief are hereby denied. No motion for rehearing  
or reinstatement will be entertained by this Court.

LABARGA, LAWSON, MUÑIZ, COURIEL, and GROSSHANS, JJ.,  
concur.

A True Copy  
Test:



John A. Tomasino  
Clerk, Supreme Court



lc  
Served:

ERICA ARBOLEYA  
KEVIN TYRELL BEACH  
HON. LONN WEISSBLUM, CLERK  
HON. BRENDA D. FORMAN, CLERK

JOHN W. RESNIK III  
LISA V. STEWART

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT, 110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401

March 18, 2021

**CASE NO.: 4D21-0546**

L.T. No.: 18002120MM20A

KEVIN TYRELL BEACH

v. 17TH JUDICIAL CIRCUIT COURT, and  
STATE OF FLORIDA

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Appellant / Petitioner(s)

Appellee / Respondent(s)

**BY ORDER OF THE COURT:**

ORDERED that petitioner's February 22, 2021 motion for rehearing, written opinion, and certification is denied.

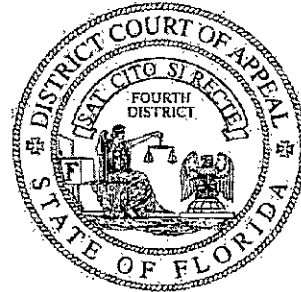
Served:

cc: Attorney General-W.P.B. Kevin Tyrell Beach

kr



**LONN WEISSBLUM, Clerk**  
Fourth District Court of Appeal



IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT, 110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401

February 16, 2021

**CASE NO.: 4D21-0546, 4D21-0663**

L.T. No.: 18002120MM20A,  
18002120MM10A,  
CACE21-000127

KEVIN TYRELL BEACH

v. 17TH JUDICIAL CIRCUIT COURT, and  
STATE OF FLORIDA

Appellant / Petitioner(s)

Appellee / Respondent(s)

**BY ORDER OF THE COURT:**

ORDERED that this court consolidates the above cases for review. The petitions for writ of prohibition are dismissed. Petitioner may raise the claims on direct appeal following disposition of the pending lower court case LT18-2120MM.

GERBER, CONNER and ARTAU, JJ., concur.

Served:

cc: Attorney General-W.P.B.  
Clerk Broward

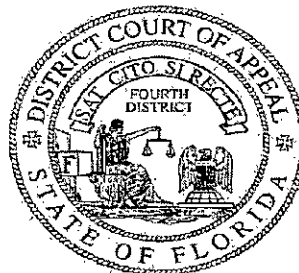
Kevin Tyrell Beach  
Hon. Robert Diaz

State Attorney-Broward

kk

*Lonnn Weissblum*

**LONN WEISSBLUM, Clerk**  
Fourth District Court of Appeal



17th Judicial Circuit in and for Broward County  
In the County Court in and for Broward County

DIVISION  
☒ Criminal  
☐ Traffic  
☐ Other

**ORDER**

Filed in Open Court,  
CLERK OF THE CIRCUIT COURT  
ON MAR 28 2019  
BY [Signature]

THE STATE OF FLORIDA VS

Beach, Kevin

DEFENDANT

CASE NUMBER

18-2120MM20A

CHARGE

1. Battery

The Court hereby declares  
a Mistrial in the above  
mentioned case for reasons as  
stated on the record in open  
Court.

DONE AND ORDERED THIS

20th

DAY OF

March20

IN

BROWARD COUNTY, FLORIDA

JUDGE

Robert Diaz

COPIES

BSO

SAO

EXHIBIT 5

**IN THE FORTH DISTRICT COURT OF APPEALS  
IN AND FOR THE STATE OF FLORIDA**

KEVIN TYRELL BEACH,

L.T Case No: 18002120MM20A

Petitioner,

v.

LOWER TRIBUNAL (Representative: Honorable Fred Seraphin) and

STATE OF FLORIDA (Representative: ASA John Resnik),

Respondents. \_\_\_\_\_/

**PETITION FOR WRIT OF PROHIBITION**

Petitioner, Kevin Tyrell Beach ("Mr. Beach"), petitions this Court to issue a Writ of Prohibition, precluding jurisdiction in the County Court ("Lower Tribunal") of the 17<sup>th</sup> Judicial Circuit in and for Broward County, pursuant to Florida Rule of Appellate Procedure 9.100, 9.030(c)(2) and (c)(3), and as grounds would show:

This petition seeks an order directed to a lower tribunal. This petition is also accompanied by an appendix, as prescribed by rule 9.220. This petition does contain references to the appropriate pages of the supporting appendix. (*please see appendix*).

RECEIVED, 01/22/2021 04:33:31 PM, Clerk, Fourth District Court of Appeal

### **BASIS FOR THIS COURT'S JURISDICTION**

This Court has original jurisdiction under Fla.R. App. P. 9.030(c)(2) and (c)(3) to enter a Writ of Prohibition. Prohibition exists only to prevent a court from acting **in excess** of its jurisdiction. Prohibition is an extraordinary remedy for extraordinary circumstances. It can only grant prohibition to prevent something that has not been done yet. In addition, the petitioner must show (1) there are no disputed facts and (2) the lower tribunal has no jurisdiction to do what the petitioner is trying to prevent.

### **NATURE OF THE RELIEF SOUGHT**

Petitioner, Mr. Beach seeks a Writ of Prohibition from this Court precluding prosecution, and the exercise of jurisdiction in the lower tribunal in the County Court of the 17<sup>th</sup> District, pursuant to the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution, Florida's Double Jeopardy Clause, found in article I, section 9 of its Constitution, and respectfully moves for this court to make a full "standing inquiry". The lower tribunal has no jurisdiction to exercise over this case. The facts presented herein, are undisputed.



## **OVERVIEW**

The lower tribunal does not have jurisdiction to proceed with the case set forth in this petition. The lower tribunal has failed to remove the double jeopardy bar-- required by law, before declaring a mistrial, in which was induced by its own bad faith conduct. The lower tribunal was required to present, or be presented with a manifest necessity (justification), or receive intelligent, voluntary consent by the petitioner. The lower tribunal has not been presented any legal justification of manifest necessity, or any legal voluntary, or intelligent consent before declaring a mistrial. Thus, failing to remove the Double Jeopardy prohibition bar, before declaring a mistrial. Therefore, the lower tribunal is prohibited from exercising jurisdiction in the case set forth in this petition. The lower tribunal has no jurisdiction to exercise over this case. The facts presented herein, are undisputed.

## **FACTS**

In the course of the prosecution in this lower tribunal case, the petitioner requested "standby counsel" on numerous occasions as reflected on the record, of January 31<sup>st</sup>, 2019. Judge Diaz in the lower tribunal denied the petitioners requests— alleging that it would not be fair to an attorney, because they cannot really

represent the petitioner and have a license to protect. *See Appendix: Record Citation- 4 (line 21-24), and Record Citation- 5 (line 1-3)*. On March 20<sup>th</sup>, 2019, a trial occurred after a jury was impaneled and sworn in, by Judge Robert Diaz. The petitioner was unrepresented by an attorney throughout his trial. During the trial the petitioner invoked his right to an attorney, after he struggled to present his case in its best presentable fashion. *See Appendix: Record Citation- 6 (line 22-25)*. During the trial the petitioner begs for an attorney because he does not know how to proceed. *See Appendix: Record Citation- 7 (line 10-16... and again on line 19-24)*. The Assistant State Attorney requested that the lower tribunal to conduct a Faretta Inquiry. *See Appendix: Record Citation -8 (line 1-3)*. The lower tribunal refused to conduct a Faretta Inquiry at that subsequent and crucial stage of the proceeding. The lower tribunal demonstrated his belief that a manifest necessity for a mistrial has not occurred in the above case. *See Appendix: Record Citation- 8 (line 4-6)*. The petitioner once again asserts that he needs representation of an attorney and a professional eye on his case. *See Appendix: Record Citation-10 (line 8-15)*. The lower tribunal asserted that it wouldn't be fair for an attorney to be appointed in the middle of the petitioner's trial. *See Appendix: Record Citation -11 (line 2-9)*. The lower tribunal seems to be asserting that the petitioner was not

entitled to his right to counsel—whether the petitioner was in jeopardy or not. The lower tribunal appears to be more concerned about fairness and protection of attorney, over the petitioner’s double jeopardy rights. The lower tribunal refused to appoint the petitioner with counsel and failed to present any other alternatives to remedy the prejudice of removing the petitioner’s right to attorney (ex. providing counsel or removing the jeopardy pursuant to Florida Rules of Criminal Procedure Rule 3.111 b 1). The record reflects that the lower tribunal has demonstrated that the-- trial was incomplete because the alleged victim never testified. *See Appendix: Record Citation-12 (line 22-23)*. The lower tribunal thereafter attempted to negotiate a plea bargain with the petitioner without an attorney present. The lower tribunal offered an adjudication followed by 20 days in Broward County Jail. The petitioner rejected the offer and asserted he wanted his adjudication to come from a particular tribunal (jury). *See Appendix: Record Citation -13 (line 8-13)*. The petitioner requested to finish the trial with an attorney present so he can properly appeal if necessary, and the lower tribunal denied that request. *See Appendix: Record Citation-14 (line 1-12)*. It appears the lower tribunal attempted to goad the layman petitioner into unintelligently-- consenting to a mistrial without the presence of an attorney. The lower tribunal presented the defendant a “Hobson

Choice” and refused to allow the petitioner, to invoke his right to counsel. The lower tribunal induces a declaration of a mistrial as the ultimate alternative-- to remedy the petitioner’s entitlement of his right to an attorney. The lower tribunal declared a mistrial. *See Appendix: Record Citation -16 (line 6-9)*. The lower tribunal explains why he declared a mistrial. *See Appendix: Record Citation -17 (line 19-25)*. The record doesn’t reflect if the petitioner consented to a mistrial intelligently , voluntarily, or conferred with, nor enjoyed his right to an attorney. The record does not reflect **the state objecting** or meeting the **burden of proving a manifest necessity** for a mistrial was necessary. The petitioner has not enjoyed his valued right to a particular tribunal. This right was not enjoyed due to the “Bad Faith” conduct of the lower tribunal. The lower tribunal repeatedly denied the petitioner’s request for standby counsel. The lower tribunal’s own bad faith conduct resulted in a mistrial-- simply because the petitioner invoked his right to counsel. The lower tribunal did not legally remove any double jeopardy bar before declaring a mistrial. The petitioner simply invoked his right to an attorney. The lower tribunal has attempted to obtain evidence of consent, by initiating “crucial confrontation”, with the petitioner outside the presence of his attorney. The lower tribunal denied the petitioner of his right to an attorney. The lower tribunal

removed the petitioner's ability to rely on the effective assistance, and competent advice of an attorney. The lower tribunal failed to conduct a Faretta Inquiry. The lower tribunal failed to protect the rights of the petitioner before declaring a mistrial. The lower tribunal does not present any legal justification, or any legal consent—which is necessary to remove the double jeopardy prohibition bar, before declaring a mistrial. On March 31<sup>st</sup>, 2020 the Florida Supreme Court issued an executive order, appointing the Honorable Fred Seraphin to preside over the case. The lower tribunal has no jurisdiction to exercise over this case. The facts presented herein, are undisputed.

### **MEMORANDUM OF LAW**

Standby counsel is to advise and aid a Defendant if, and when the Defendant requests help, and to be available to represent the Defendant in the event that termination of the Defendant's self-representation is necessary. As "standby counsel," the appointed counsel should continue to be involved in the trial process to the extent that a delay or continuance will not be required in the event that termination of the Defendant's self-representation is necessary. *See Behr v. Bell*, 646 So. 2d 837 – Fla: Dist. Court of Appeals, 1<sup>st</sup> Dist. 1994. A judge should use

caution in denying standby counsel, because a defendant may waive the right to self-representation if the defendant later abandons his or her initial request to proceed pro se. *Brown v. Wainwright*, 665 F.2d 607, 611 (5th Cir. 1982). Bad faith is presented when standby counsel is denied upon request and later becomes the result of a mistrial. A defendant that invokes his right to counsel—becomes protected by that right. The Court and the State cannot initiate any crucial confrontation with a defendant without his attorney present. Any evidence obtained by the Court or the State-- in violation of this right cannot be used and is impermissible as a matter of law. To invoke the right to counsel, a person must “unambiguously” request the presence of an attorney. When an accused invokes the right to a lawyer by requesting counsel; Neither the police nor the judge differentiate between constitutional sources of the right to counsel or announce which constitutional provision is affected at any given stage of the proceedings. There is no explanation, for example, that the right to counsel during interrogations may exist simultaneously under both section 9 and section 16 of the constitution. The right to this assistance obviously continues throughout the defendant's detention. When the initial restraint becomes a court case, the accused is then entitled under article I, section 16 to a lawyer's assistance, not only during

custodial interrogation but also throughout any and all necessary stages of the case. Once the right to counsel has attached and a lawyer has been requested or retained, the State may not initiate any crucial confrontation with the defendant on that charge in the absence of counsel throughout the period of prosecution. *both section 9 and section 16 of the constitution*. **Evidence obtained** by the State in contravention of these guidelines violate the Florida Constitution and may not be used by the State. *See Traylor v. State, 596 So. 2d 957 - Fla: Supreme Court 1992.*

The Counsel Clause of the Florida Constitution is contained in Section 16 of our Declaration of Rights, which provides in part-- In all criminal prosecutions the accused shall, upon demand, ... have the right ... to be heard in person, by counsel or both... .Art. I, § 16, Fla. Const. Our state clause embodies an express right to choose the manner of representing oneself — either pro se or through counsel — against criminal charges. In *Cutts v. State*, 54 Fla. 21, 45 So. 491 (1907), this Court ruled that "[e]very person accused of crime has a right to have counsel to aid him in his defense, but no one is compelled to employ counsel." the defendant is entitled to decide at each crucial stage of the proceedings whether he or she requires the assistance of counsel. At the commencement of each such stage, an unrepresented defendant must be informed of the right to counsel and the consequences of waiver. Any waiver of this right must be knowing, intelligent,

**and voluntary**, and courts generally will indulge every reasonable presumption against waiver of this fundamental right. Where the right to counsel has been properly waived, the State may proceed with the stage in issue; but the waiver applies only to the present stage and **must be renewed** at each **subsequent crucial stage** where the defendant is **unrepresented**. The text of our Florida Constitution begins with a Declaration of Rights — a series of rights so basic that the framers of our Constitution accorded them a place of special privilege. Each right is, in fact, a distinct freedom guaranteed to each Floridian against government intrusion. Each right operates in favor of the individual, against government. The Sixth Amendment guarantees the assistance of counsel in criminal proceedings. If a defendant can't afford to hire an attorney, the court will appoint one at the government's expense. **A mistrial is required as a matter of law to be justified and consensual -- in order to remove the jeopardy attached in a trial of a particular tribunal.** The law requires a manifest necessity stated and the burden of it proven in order to remove the jeopardy or at least a showing that the defendant was never in jeopardy. A showing in *Taylor v. State*, 811 So. 2d 803 — Fla: Dist. Court of Appeals, 1st Dist. 2002 supports the following: The Supreme Court held that “[b]y failing to consider and reject all possible alternatives to a mistrial, including a continuance, the trial judge did not meet the requirement of



manifest necessity and double jeopardy barred retrial... We agree, grant the petition, and remand to the trial court with directions to grant Taylor's motion to dismiss. We find that the state has also failed to meet its burden in the instant matter. No "manifest necessity" was shown with regard to a mistrial in Taylor's case under the facts presented to the court at the time. Accordingly, Taylor's motion to dismiss on double jeopardy grounds should have been granted. In *United States v. Jorn*, 400 U.S. 470 (1971): "The Court in *Jorn*, in holding that re-prosecution of the defendant in that case was barred, focused particularly on the trial judge's failure to evaluate other alternatives, including a trial continuance, before declaring a mistrial. The Court stated: It is apparent from the record that no consideration was given to the possibility of a trial continuance". It seems abundantly apparent that the trial judge made no effort to exercise a sound discretion to assure that a mistrial was a manifest necessity. The State must demonstrate "manifest necessity" for the mistrial, a requirement that has been part of this country's jurisprudence since 1824. *United States v. Perez*, 22 U.S. (9 Wheat.) 579, 580, 6 L.Ed. 165 (1824). The manifest necessity standard must be applied on a case-by-case basis and cannot be applied mechanically. See, e.g., *Arizona v. Washington*. The double jeopardy provision of the Florida Constitution requires a trial judge to consider and reject **all** possible alternatives

**before** declaring a mistrial under the provision of Art. I, § 9, Fla. Const. *Jorn*;

*Perez*: “To put it directly, the correct legal principle is that a trial judge may not declare a mistrial — free of double jeopardy consequences... The alleged inability to proceed may not be based solely, or even substantially, on the subjective impressions of the trial judge, and it must be such that it cannot be cured or avoided by another alternative.” Thomason v. State, 620 So. 2d 1234 – Fla:

Supreme Court 1993 states: “The wishes of the defendant to continue the trial must control when manifest necessity has not been demonstrated, *Dinitz*; *Jorn*, and doubts about whether the mistrial declaration was appropriate should be resolved in favor of the liberty of the citizen. *Downum*. In this case, because the judge failed to consider and reject alternatives, manifest necessity did not exist. The defendant strongly expressed his desire to continue the trial. Thus, the trial judge erred in declaring a mistrial.” The Double Jeopardy Clause would also prevent the State from retrying a defendant where it is established that the judge or prosecutor, by his or her own egregious conduct, caused the defendant to move for a mistrial.

However, retrial is barred where the error that prompted the mistrial is intended to provoke a mistrial or is **motivated by bad faith** or undertaken to harass or prejudice the defendant *United States v. Dinitz*, 424 U. S. 600, 611 . . . (1976).

Accord, *State v. Rathbun*, 37 Or. App. 259, 586 P. 2d 1136 (1978), reversed on other grounds, 287 Or. 421, [600] P. 2d [329] (1979).” *Id.*, at 417-418, 619 P. 2d, at 949. In *Oregon v. Kennedy*, the United States Supreme Court held where it can

be shown that the prosecution's "conduct giving rise to the successful motion for a mistrial was intended to provoke the defendant into moving for a mistrial...."Only where the governmental conduct in question is intended to 'goad' the defendant into moving for a mistrial may a defendant raise the bar of double jeopardy to a second trial after having succeeded in aborting the first on his own motion."

Oregon v. Kennedy, 456 U.S. 667, 102 S.Ct. 2083, 72 L.Ed.2d 416

(1982) As stated by the United States Supreme Court in Kennedy, "[The Double Jeopardy Clause] bars retrials where 'bad-faith conduct by judge or prosecutor,' threatens the '[h]arassment of an accused by successive prosecutions or declaration of a mistrial so as to afford the prosecution a more favorable opportunity to convict' the defendant." United States v. Dinitz, 424 U. S., at 611. The language just quoted would seem to broaden the test from one of intent to provoke a motion for a mistrial to a more generalized standard of "bad faith conduct" or "harassment" on the part of the judge or prosecutor. It was upon this language that the Oregon Court of Appeals apparently relied in concluding that the prosecutor's colloquy with the expert witness in this case amount to "overreaching." To protect the defendant from being placed in jeopardy twice—not only must it be justified but he must also provide the court with consent. The defendant is required to consent intelligently to a mistrial to adequately remove the double jeopardy bar. The

defendant must also have a **voluntary** choice when he **consents intelligently** to **remove the Double Jeopardy Bar**. *State v. Grayson*, 90 So. 2d 710 - Fla.:

*Supreme Court 1956* States: A mistrial having therefore been granted without the expressed consent of the accused and for a stated reason which we do not consider to be legally sufficient to justify the granting of the motion without the consent of the accused, a subsequent trial for the same offenses would constitute double jeopardy. In *Allen v. State*, 52 Fla. 1, 41 So. 593, it was held that the silence of the defendant on trial for a crime or his failure to object or protest against an illegal discharge of the jury before verdict does not constitute a consent to such discharge of a jury. Such conduct by the accused is not a waiver of the constitutional inhibition against a subsequent trial for the same offense after the **improper discharge** of the jury. See also, *State ex rel. Dato v. Himes*, 134 Fla. 675, 184 So. 244; *State ex rel. Alcala v. Grayson*, 156 Fla. 435, 23 So.2d 484. Hence, although a reviewing court may defer to the trial court's discretion to make a mistrial decision, "[i]f the record reveals that the trial judge has failed to exercise the 'sound discretion' entrusted to him, the reason for such deference by an appellate court disappears." *Arizona v. Washington*, 434 U.S. at 510 n.28, 98 S.Ct. at 832 n.28. A court in Minnesota has stated that a court **has an obligation to lay a detailed and complete record, showing** that a defendant **intelligently consented** to the mistrial

with the unequivocal understanding that he was consenting to being tried a second time. It was regrettable that a charge that all consider serious – ends on this abrupt note. However, the constitutional prohibition against trying a defendant twice for the same offense is fundamental, a sine qua non of American due process standards. On that record, the interests of justice required that the defendant's conviction be reversed on the ground that his constitutional right against double jeopardy was violated. The state argued that by failing to object to the state's motion, Olson impliedly consented to the mistrial. The failure to object to a mistrial may not, standing alone, constitute consent. It is simply a factor to be considered. As a layman, the defendant could not possibly have understood the import of failing to object to the prosecutor's request for a mistrial. He likely assumed that he was better off with a mistrial so he could get time to talk to an attorney because the record shows that the district court and the prosecutor implied to Olson that this mistrial was in the form of a continuance to help Olson with trial preparation. Olson had absolutely no idea that a district court judge might not be able to declare a mistrial after the jury had been sworn and guarantee the state the right to a second prosecution without his consent. *See State v. Olson 609 N.W.2d 293 (2000)*. The Courts in *Chapinoff v. State*, 2 So. 3d 1080 - Fla: Dist. Court of Appeals, 3rd Dist. 2009 presented that the consent must be voluntary states to

remove the double jeopardy bar. They expressed that providing a "hobson choice" removes the defendants ability to make a voluntary decision: "Responding to such a Hobson's choice is the absolute antithesis of the *voluntary* relinquishment of the defendant's right to proceed before his chosen jury which is required to obviate a double jeopardy bar... Because the prosecution is therefore precluded by the prohibition against being "subject for the same offense to be twice put in jeopardy of life or limb," U.S. Const. amend. V, the convictions under review are reversed with directions to discharge the defendant. Reversed." The law requires an intelligent, voluntary, consensual mistrial or otherwise it must be justified as a manifest necessity in order to remove the double jeopardy bar before declaring a mistrial otherwise a mistrial will prohibit a retrial on grounds of Double Jeopardy. Failure to present a record demonstrating the required procedures will invoke the constitutional protection against double jeopardy under the rule stated. *See Williams v. Grayson, 90 So.2d 710 (Fla. 1956)*. The protection of an accused against being twice put in jeopardy for the same offense is a right guaranteed by both the Fifth Amendment to the United States Constitution and article I, section 9 of the Florida Constitution. **Jeopardy attaches** in a criminal proceeding when the jury is impaneled and sworn. The reason that a defendant is put in jeopardy **before**

**the trial ends** with a verdict has been explained by the United States Supreme Court as follows: “The underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty.”

### **ARGUMENT**

The petitioner contends, that his mistrial does not present the evidence required—to remove the Double Jeopardy prohibition bar attached in the Constitutions. The record does not demonstrate or exhibit that the mistrial were of a manifest necessity or consensual as a matter of law. The mistrial record demonstrates “bad faith” conduct by the lower tribunal and no objections by the State. The lower tribunal denied the petitioner’s request for a “standby counsel” to render him aid or to provide security that the petitioner would enjoy his right to a particular tribunal. Regardless if the lower tribunal’s action[s] were intentional or not--it was still in “bad faith”. The lower tribunal’s own actions could have been avoided if it was more focused on the petitioner’s rights and did not abuse it’s discretion. The

lower tribunal actions demonstrate that it had no interest in protecting the petitioner's rights. The layman petitioner simply invoked his right to counsel during trial, after having trouble presenting evidence. The lower tribunal denied the petitioner of his right to counsel. The lower tribunal initiated crucial confrontation with the petitioner by attempting to negotiate a plea offer of 20 days in Broward County Jail. The lower tribunal did not attempt to provide the petitioner with counsel. The lower tribunal did not attempt to remove the jeopardy attached in the trial prior to a mistrial. The lower tribunal was required, as a matter of law to renew the petitioner's waiver of an attorney by conducting a Faretta Hearing at each subsequent and crucial stage of a proceeding. The lower tribunal has failed to conduct a Faretta Hearing before the trial or before declaring a mistrial. The lower tribunal was required, as a matter of law to inform the petitioner of his right to counsel at each subsequent and crucial stage of the proceeding. The lower tribunal has failed to do so. The lower tribunal was required as a matter of law-- to provide counsel for the petitioner when the petitioner invoked his right to counsel. The lower tribunal has failed to do so. The lower tribunal was required as a matter of law to lay a detailed and complete record showing that the petitioner intelligently consented to the mistrial with the unequivocal understanding that he was



consenting to being tried a second time. The lower tribunal has failed to do so. The lower tribunal, as a matter of law is to ensure that the petitioner, consented to the mistrial voluntarily. The lower tribunal has failed to do so. The lower tribunal was required, as a matter of law, to refrain from obtaining evidence or consent-- in absence of counsel-- from the layman petitioner, after his right to counsel has been invoked. The lower tribunal has failed to do so. Any evidence or consent provided by the petitioner in the absence of his attorney is inadmissible as a matter of law. Therefore, the record provides no evidence of legal justification or consent to remove the double jeopardy bar protecting the petitioner. The lower tribunal's own "bad faith" conduct resulted in a mistrial, without the removal of the Double Jeopardy prohibition bar. The petitioner is therefore entitled to a double jeopardy prohibition. Jeopardy was never removed before declaring a mistrial, as a **matter of law**. Re-prosecution after a mistrial has unnecessarily, or improperly been declared by the lower tribunal subjects the petitioner to the same personal strain and insecurity regardless of the motivation underlying the lower tribunal's action. The **erroneous conduct** by the lower tribunal **demonstrated** the absolute antithesis of the voluntary relinquishment (consent) of the petitioner's right to proceed before his chosen jury which is required to remove a double jeopardy

**bar.** The text of our Florida Constitution begins with a Declaration of Rights — a series of rights so basic that the framers of our Constitution accorded them a place of special privilege. Each right is, in fact, a distinct freedom guaranteed to each Floridian against government intrusion. **Each right operates in favor of the individual, against government.** The lower tribunal has no jurisdiction to exercise over this case. The facts presented herein, are undisputed.

### **CONCLUSION**

In conclusion the petitioner, respectfully requests this Honorable Court-- to honor its oath in upholding the Constitution and the petitioner's rights therein. The petitioner seeks integrity in the justice system as well as peaceful compliance within the law. The lower tribunal has no jurisdiction to exercise over this case. The facts presented herein, are undisputed. The petitioner requests this Court to issue the requested Writ of Prohibition without bias.

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the forgoing has been e-filed through the filing portal and serviced to respondents and all participating parties, in regard to petition: The Honorable Fred Seraphin: [fseraphin@jud11.flcourts.org](mailto:fseraphin@jud11.flcourts.org), his Judicial Assistant- Marie Thompson: [mthompson@jud11.flcourts.org](mailto:mthompson@jud11.flcourts.org), Assistant State Attorney- John Resnik: [jresnik@sao17.state.fl.us](mailto:jresnik@sao17.state.fl.us), counsel Lisa Stewart: [lisavlaw@gmail.com](mailto:lisavlaw@gmail.com) or [lstewart@rc-4.com](mailto:lstewart@rc-4.com), and her secretary Daniel Roca: [droca@rc-4.com](mailto:droca@rc-4.com) of Broward County, Florida, for Case # 18002120MM20A, on January 22<sup>nd</sup>, 2021.

### **CERTIFICATE OF FONT COMPLIANCE**

I HEREBY CERTIFY that the instant Petition complies with the font requirements of Fla. R. App.P.9.100 (I). Times New Roman 14-point font.

Respectfully Submitted,  
Kevin Tyrell Beach  
2092 Champions Way  
North Lauderdale FL, 33068  
\*Email: [beachkevin10@yahoo.com](mailto:beachkevin10@yahoo.com)  
Phone: 954-210-2008  
/S/Kevin Beach

EXHIBIT 6

**IN THE FORTH DISTRICT COURT OF APPEALS  
IN AND FOR THE STATE OF FLORIDA**

---

RECEIVED, 01/22/2021 04:33:32 PM, Clerk, Fourth District Court of Appeal

KEVIN TYRELL BEACH,

**Petitioner,**

vs.

LOWER TRIBUNAL (Representative:

Honorable Fred Seraphin), and

STATE OF FLORIDA

(Representative: ASA John Resnik),

**Respondents,**

**LT. CASE NO. 18-2120 MM20A**

---

**APPENDIX TO PETITIONER'S WRIT OF PROHIBITION**

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Petitioner, Kevin Tyrell Beach, submits this appendix to his Writ of Prohibition, pursuant to Florida Rule of Appellate Procedure 9.220, If the petition seeks an order directed to a lower tribunal, the petition shall be accompanied by an appendix as prescribed by rule 9.220, and the petition shall contain references to the appropriate pages of the supporting appendix.

<b>INDEX OF THE APPENDIX</b>	
<b>Record Citation</b>	<b>Description</b>
3	Order of Mistrial
4-5	Defendants January 31 <sup>st</sup> , 2019 Pretrial Requests for Standby Counsel.
6-7	Defendants March 20 <sup>th</sup> , 2019 Mid Trial Invocation of his Right to an Attorney.
8	Judge Demonstrates his Belief that a “manifest necessity” for a Mistrial Does Not Exist.
9	The Defendants Expresses the Anguish this Case has caused.
10	The Defendant Explains Why he Needs an Attorney.
11	Judge Denies Alternatives
12	Judge Expresses the Alleged Victim Failure to Testify
13	Defendant Requests a Particular Tribunal (jury).
14	Judge Gives Defendant a “Hobson Choice” (goading)
15	Judge Wants Consent as an Alternative to a Mistrial without the Defendants Attorney Present
16	Mistrial Declared
17	Reason for Mistrial explained

<input checked="" type="checkbox"/> 17th Judicial Circuit in and for Broward County <input checked="" type="checkbox"/> In the County Court in and for Broward County		Filed In Open Court, CLERK OF THE CIRCUIT COURT ON <u>MAR 28 2019</u> BY <u>[Signature]</u>
DIVISION <input checked="" type="checkbox"/> Criminal <input type="checkbox"/> Traffic <input type="checkbox"/> Other	ORDER	
THE STATE OF FLORIDA VS <u>Beach, Kevin</u>		CASE NUMBER <u>18-21204MY204</u>
DEFENDANT		
CHARGE <u>1 Battery</u>		
<p style="font-size: 18pt; text-align: center;">The Court hereby declares  a Mistrial in the above  mentioned case for reasons as  stated on the record in open  Court.</p>		
DONE AND ORDERED THIS <u>20th</u> DAY OF <u>March</u> 20 <u>19</u> IN		
BROWARD COUNTY, FLORIDA		
<u>[Signature]</u> JUDGE		
<u>Robert Diaz</u>		
COPIES BSO SAO	11242 BLANK ORDER	

defendant right?

THE DEFENDANT: Yeah.

MS. TERRADES: Yes, Your Honor.

THE COURT: Okay. So, let me see it please.

MS. TERRADES: Let me print a copy unless you want the --

THE COURT: Sure.

MS. TERRADES: -- whole file.

THE COURT: No. I just want to look at it.

MS. TERRADES: Okay.

THE COURT: And I'm going to read it to him.

MS. TERRADES: Okay.

THE COURT: Now, initially you had an Assistant Public Defender.

THE DEFENDANT: That was accidentally appointed.

THE COURT: Accidentally.

THE DEFENDANT: Right.

THE COURT: You didn't want a Public Defender; you want to represent yourself?

THE DEFENDANT: I did want standby trial, but you said you don't do that.

THE COURT: No. I don't think that's fair to the attorney.

THE DEFENDANT: Yeah.

1 THE COURT: Because they have a license. They  
2 have to protect and they can't really represent you  
3 if they're on standby.

4 THE DEFENDANT: Right.

5 MS. TERRADES: Should be printing now.

6 THE COURT: Hope there's paper.

7 MS. TERRADES: Yes, there's paper.

8 THE COURT: All right. Now, I'm going to read  
9 this, sir. I've never seen it before.

10 THE DEFENDANT: Um-hum (affirmative).

11 THE COURT: I'm going to read it out loud to  
12 you. I'm not saying this is the truth. I'm just

13 saying what's on the reports, okay?

14 THE DEFENDANT: But this is going by the sworn  
15 statements that

16 THE COURT: Yeah, I'm just going to -- I'm  
17 just going to tell you what it says. Okay, and  
18 like I said, I don't know if it's true or not. I'm  
19 just telling that's what somebody reported.

20 Is that long?

21 MS. TERRADES: Yes, Judge.

22 MR. FOOR-PESSIN: This is more than (cannot be  
23 clearly heard). This is our agency filing packet.

24 THE COURT: Okay.

25 And you asked a question that the law



THE COURT: Well, sir, I can never know what anybody knows. I really can't read minds and know what anybody knows. Perjury is something that has to be proven just like you listed all the elements they would -- you will have to show all that.

MR. BEACH: It's probable cause.

THE COURT: That's not what we are having the trial on. We are not having a trial on perjury of the victim, we are having a trial of a battery against you, the defendant.

So, you're telling me that all these things you put here, he gave sworn statements, you can talk about that. You can say what he said in the statements, if he said something different you can show him what he said in the statement. And the deposition the same thing.

I don't know if you have a copy of the court proceeding that we had the motion to suppress. I don't know if you ordered a copy of it, but unless you have copy of it, you can't say he said something differently. You can't impeach him.

MR. BEACH: Then, if I need an attorney then, because everything I say you just say that it's not whatever, so obviously, I don't know how to proceed then. Everything I am asking --

1 you are turning one blind eye.

2 THE COURT: Okay.

3 MR. BEACH: There's a constitutional right of  
4 people's protection, so if you are going to  
5 prosecute one person, how can you turn a blind eye  
6 for one person?

7 THE COURT: I don't prosecute anybody. I'm just  
8 the judge. The state attorney prosecutes and  
9 that's who you have to go see about that.

10 MR. BEACH: But everybody who knows just  
11 take me to jail. I need an attorney. Because I  
12 can't -- I can't proceed like this, because I can't  
13 speak. I can't say this. I'm trying to submit  
14 evidence. I'm trying to say this. I'm saying

15 this. Nobody is. I'll take the 364. I don't  
16 care. It doesn't matter to me.

17 THE COURT: What if I didn't want to give you  
18 364, you want it anyway?

19 MR. BEACH: I don't want it. Just -- Just let  
20 me get an attorney. I'll take -- when -- when I  
21 get convicted because I'm pretty sure I am  
22 because all this tainting and all this whatever  
23 manipulating the witness and saying, "Hey, say  
24 this. And, oh, say this. And, oh, make sure make  
25 sure you say this." And you are lining them up and

1 MS. TERRADES: Judge, the State is going to  
2 request that the Court do another Faretta inquiry  
3 as the defendant stated that he wants an attorney.

4 THE COURT: There's no need -- reason to go  
5 through another trial to start over again. He  
6 been representing himself fine.

7 MS. TERRADES: Judge, he said that he wants an  
8 attorney at this point. And he wrote

9 THE COURT: State, do you have your witnesses  
10 before I make any decisions on anything?

11 MS. TERRADES: Yes, Judge.

12 THE COURT: I'm not sure why you're jumping up  
13 and asserting that. I mean, I can figure out  
14 whether someone needs a Faretta hearing.

15 MS. TERRADES: Judge, he sent -- he wrote a  
16 motion saying that this is all under threat and  
17 coercion and duress.

18 THE COURT: And that's what I was talking to  
19 him about.

20 MS. TERRADES: And now he just said that he  
21 feels that he needs an attorney, because he cannot  
22 adequately represent himself.

23 THE COURT: Well, yesterday he didn't want to  
24 answer any questions about that.

25 State, I really think you are jumping into the

1 wrong-- at the wrong time and the wrong place

2 I'm just letting you know that.

3 It's my job to run the courtroom not yours.

4 okay

5 MS. TERRADES: Um-hum (affirmative)

6 THE COURT: I didn't say I was going forward

7 yes, but you had felt like you had to jump in and  
8 say something.

9 MS. TERRADES: Based on what he said Judge

10 THE COURT: I understand it's what he said,

11 but sometimes you have to learn your place in the  
12 courtroom. Okay. The judge is in charge of

13 running the courtroom and finding out whether

14 someone is getting a fair trial.

15 MS. TERRADES: Yes, Judge

16 THE COURT: What do you want to do, sir?

17 MR. BEACH: I want to be placed in custody

18 THE COURT: Sir, I don't want to put you in

19 jail. Why do you keep asking me to do that?

20 MR. BEACH: Because there's a lot already  
21 going on in my outside life and this case has

22 affect it and it has affected another case that I  
23 have

24 THE COURT: But is it going to help you to go  
25 to jail?

1 So, that's the only way I could put you in  
2 jail, but I'm not going to do that. And I'm hoping  
3 you are not going to do that. Do you want me to  
4 give you another trial day? Do you want to try and  
5 hire an attorney? You want to see if you qualify  
6 for assistant public defender? I'm giving you all  
those opportunities.

8 MR. BEACH: I don't -- I just know I need an  
9 attorney, because whatever I'm saying is not  
10 on actual basis. Maybe an attorney can go over my  
11 case and figure out something I missed or my  
12 professional eye, because I don't have one. He can  
13 see something and come up with something, because  
14 obviously I don't know how else to -- I don't know how else  
15 to argue this.

16 THE COURT: You see what you're asking me to  
17 do, if you'll hear me out for a second. You're  
18 asking me to find somebody, a witness, who  
19 haven't heard the testimony in court yet, even  
20 though I had him in prior motion. You are trying  
21 to get me to say that they committed perjury.  
22 I'm not the one who decides that. A jury  
23 decides that if he's committed perjury if the state  
24 files charges against him. It's not me. He would  
25 have been entitled to have a trial too. It isn't

1 defender and we can continue the trial.

2 THE COURT: You are going to ask an attorney  
3 to jump in the middle of a trial without knowing  
4 anything about it. I mean, that goes totally  
5 opposite of what attorneys do. They investigate,  
6 they do things, they might take depositions, I  
7 mean, I wouldn't ask an attorney to sit here  
8 without knowing anything. That wouldn't be fair to  
9 the attorney.

10 Try and give me a solution, sir. I'm looking  
11 for a solution and I'm asking you, other than  
12 putting you in jail. Right now, I can't put you in  
13 jail.

14 MR. BEACH: I can't think of no better  
15 solution. I was going to do it yesterday, but I  
16 was in the process of filing a report.

17 THE COURT: Here is what you can do. You want  
18 to plead guilty. I'll adjudicate your sentence you  
19 to 30 days in jail and then, you can go wherever  
20 you want.

21 MR. BEACH: No. I want to do the jail time.  
22 I don't want a conviction.

23 THE COURT: Well, you can't have your cake and  
24 eat it too, sir.

25 MR. BEACH: No. That's what I'm saying that's



1 why I said I'll just do the 364

2 THE COURT: No, I can't do that.

3 understand that. Legally, I can't put you in jail

4 for a crime you haven't been convicted of yet.

5 Now, if you want to enter a no contest plea, saying

6 you don't admit it, you don't deny it, but we are

7 finished with it, I'll sentence you to 30 days.

8 Did you get any time in already?

9 MR. BEACH: No.

10 THE COURT: You didn't get arrested on the

11 case?

12 MS. TERRADES: No, Judge.

13 MR. BEACH: No.

14 THE COURT: No? Okay. I'll even sentence you

15 to 20 days in jail.

16 MR. BEACH: It doesn't matter how much time

17 you give me. I'm still going to jail anyway, so

18 THE COURT: How do you know you are going to

19 jail anyway? You don't know what this jury is

20 thinking.

21 MR. BEACH: I feel like the

22 THE COURT: They haven't even heard the victim

23 testify how would you know what they are thinking?

24 MR. BEACH: Because I have -- I have a pending

25 felony case and the prosecutor has already saying

1 a -- call it a mistrial, give you a chance to hire  
2 an attorney or see if you qualify for a public  
3 defender. But if you tell me you have conflict  
4 counsel then it's going to have to be conflict  
5 counsel, because there must be some conflict within  
6 the Public Defender's Office that they had to give  
7 you special counsel.

8 So, we can do that or you can enter a no  
9 contest plea. I'll adjudicate you, 20 days in the  
10 Broward County jail. I'll have to impose court  
11 costs, but I'll 180 days to pay it.

12 MR. BEACH: I want to be found guilty by a  
13 jury so I can appeal the conviction. I'm not  
14 worried about doing the time.

15 THE COURT: Did you say you want to be  
16 convicted by the jury?

17 MR. BEACH: Because at least I'll have a  
18 chance to appeal. I'm not worried about the time.  
19 I'm just don't like all this messed up stuff on my  
20 record and then when I'm trying to do something  
21 productive later on in life it's holding me back  
22 so that's the only reason why  
23 I already look like threatened person so they  
24 can just use all these stuff against me  
25 don't -- I don't want that on my record. So --



1 THE COURT: Okay. So, I've given you some  
2 options. What would you like me to do, sir?

3 MR. BEACH: Go to trial and lose and  
4 then --

5 THE COURT: you want to finish the trial then?

6 MR. BEACH: Well, I want an attorney so that I  
7 could properly appeal it.

8 THE COURT: Well, we are not going to be able  
9 to do that, because I'm not going to make an attorney  
10 represent you without any chance of knowing that  
11 I can't make them say, Okay, I'll sit next to you  
12 and I'll help you.

13 you got a lot of thoughts and a lot of things  
14 about your case that they can't absorb that fast  
15 and it wouldn't be fair to them or fair to you.

16 But I can declare a mistrial and see if you qualify  
17 for a public defender or a conflict lawyer and then  
18 we'll give you a new court date.

19 MR. BEACH: Then do that, but can I please go  
20 into custody too?

21 THE COURT: Can you speak a little louder.  
22 I can't hear you.

23 MR. BEACH: I'm saying can you --

24 THE COURT: Why don't you stand over there  
25 because that microphone is a lot higher for you.

MR. BEACH: Just take me in custody. That's the only thing I could think of. I really just want to lay down and just get my mind together and just --

THE COURT: Okay. Well, I'm going to tell you what. I am not going to take you into custody, because you haven't done anything to be required to go into custody. If you want time to see if you qualify for a public defender, we'll do that. I'll grant a mistrial. We'll reset the case and then you can talk to your lawyer about what you want to do.

MR. BEACH: Would I be able to turn myself in through the jailhouse?

THE COURT: If you are on R.O.R. no.

MS. TERRADES: Judge, I just want to clarify. Are you declaring a mistrial?

THE COURT: Have I? Did you hear me say that?

MS. TERRADES: I wasn't sure, Judge.

THE COURT: Did you hear me say I'm granting a mistrial?

MS. TERRADES: No, Judge.

THE COURT: Okay. When you hear that you know.

MS. TERRADES: Okay.

I don't know the right term.

THE COURT: All right. Fair enough. If you feel you need an attorney, I'll go ahead and do that. All right. We are going to give you a copy of this order with all his stuff on it. I'm going to declare a mistrial right now on case No. 18-2120MM20A. I'll tell the jury in one moment about it. I got to check with my JA to make sure she's got the certificates done.

(whereupon the Court speaks to his JA on the phone, after which the hearing continues as follows.)

THE COURT: All right. Mr. Beach, I have an idea about something I want to run it by you and the State before I do it. My judicial assistant needs a little bit more time to get the certificates for the jurors. I want to bring them in here and tell them that I'm declaring a mistrial in the case because you are going to hire an attorney. And then, I was going to ask them what they thought about the trial so far. Is that okay with you?

I mean, I don't want to embarrass you or make you feel bad. I kind of want to get their reaction to see how they think it is when someone goes to represent themselves. Now, you can either be in

1 declare a mistrial. State

2 MS. TERRADES: No, Your Honor.

3 THE COURT: Mr. Beach?

4 MR. BEACH: No.

5 THE COURT: Okay. Bring them in.

6 THE BAILIFF: The jury is entering same seat  
7 as yesterday.

8 (Jurors enter.)

9 THE COURT: Okay. We are on the record in The  
10 State of Florida vs. Mr. Beach. Present are

11 Mr. Beach, the defendant, the assistant state  
12 attorney. The jury is all present.

13 Good morning, everybody.

14 THE JURY: Good morning.

15 THE COURT: I know we have some delays, but I  
16 have some news for you. I'm not going to do the  
17 good news bad news, I'm just going to tell you what  
18 the news is.

19 I'm declaring a mistrial in this case at this  
20 point. Mr. Beach has indicated that he needs an  
21 attorney. He has found out that it isn't as easy  
22 as he -- not that it was going to be easy, but he  
23 feels that he needs a little bit more skills and  
24 needs somebody to help represent him. So I  
25 certainly would want to give him that opportunity.

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the forgoing has been e-filed through the filing portal and serviced to respondents and all participating parties, in regard to petition: The Honorable Fred Seraphin: fseraphin@jud11.flcourts.org, his Judicial Assistant- Marie Thompson: mthompson@jud11.flcourts.org, Assistant State Attorney- John Resnik: jresnik@sao17.state.fl.us, counsel Lisa Stewart: lisavlaw@gmail.com or lstewart@rc-4.com, and her secretary Daniel Roca: droca@rc-4.com of Broward County, Florida, for Case # 18002120MM20A, on January 22<sup>nd</sup>, 2021.

### **CERTIFICATE OF FONT COMPLIANCE**

I HEREBY CERTIFY that the instant Petition complies with the font requirements of Fla. R. App.P.9.100 (I). Times New Roman 14-point font.

Respectfully Submitted,  
Kevin Tyrell Beach  
2092 Champions Way  
North Lauderdale FL, 33068  
\*Email: [beachkevin10@yahoo.com](mailto:beachkevin10@yahoo.com)  
Phone: 954-210-2008  
/S/Kevin Beach

EXHIBIT 7

**IN THE FORTH DISTRICT COURT OF APPEALS  
IN AND FOR THE STATE OF FLORIDA**

KEVIN TYRELL BEACH,  
Petitioner,

**CONSOLIDATED CASES:**

DCA CASE NO.: **4D21-0546, 4D21-0663**

v.

L.T. No.: **18002120MM20A,**

**18002120MM10A, CACE21-000127**

LOWER TRIBUNAL (Representative: Honorable Fred Seraphin)  
Respondents. \_\_\_\_\_/

**MOTION FOR REHEARING, WRITTEN OPINION, AND  
CERTIFICATION OF QUESTIONS OF GREAT PUBLIC IMPORTANCE**

Petitioner, Kevin Tyrell Beach ("Mr. Beach"), files this Motion for Rehearing, Written Opinion, and Certification of Question of Great Public Importance, pursuant to Florida Rule of Appellate Procedure 9.330 (a) (2) (A) (C) and (D), and requests that this Court accept a rehearing and grant his petition for Writ of Prohibition. If rehearing is denied, Petitioner respectfully requests this Court to issue a written opinion and certify questions of great public importance:

- A written opinion is necessary to provide an explanation for the apparent deviation from all presented Florida Cases, the purview of the Florida Constitution, as well as the United States Constitution. Such opinion is necessary to guide both the lower courts, the petitioner, pro se litigants, as well as the public. The petitioner is unaware of any law that is in favor of this court's decision. Therefore, the same questions of law are likely to recur.

RECEIVED, 02/22/2021 11:17:28 AM, Clerk, Fourth District Court of Appeal

**Please certify all the following applicable questions:**

**A)** When a double jeopardy prohibition bar is invoked in a criminal case, will a plaintiff **lack adequate “standing”** (*in a criminal case*)-- to present **adequate subject matter jurisdiction** before a court? When a double jeopardy prohibition bar is in place, does a plaintiff in a criminal case lose “standing” of its stake in receiving redress (*in regards to the outcome of a case*)-- in which a court can no longer proceed on legally? If not, is there a justiciable controversy for a court to determine the redress, enter a decree, ruling, judgement, or adjudication **in favor** of the plaintiff? Will a court still have a proper cause of action placed before it? Will subject matter jurisdiction remain-- to proceed in the case, and can a court exercise its judicial power legally? Can Subject Matter Jurisdiction be waived in a criminal proceeding? If so, How?

**B)** When double jeopardy prohibition bars punishment **and re-prosecution** of a case-- how can a judge obtain subject matter jurisdiction over the case? Can a court enter a judgment, decree, or adjudication over a case that it is prohibited from? What type of jurisdiction would the lower tribunal possess in order to exercise its authority? What justiciable controversy would they

have? If the purpose of Article 1, Section 9, a double jeopardy prohibition bar in the Florida Constitution was designed to prevent a defendant from being being "twice tried", would a second prosecution of a defendant who is protected by this right invalidate this constitutional restriction?

**C)** What relief, redress, or remedy is a defendant entitled to, if he is once again placed in jeopardy-- in violation of his double jeopardy rights within Article 1, Section 9 of the Florida Constitution **prior** to disposition of his pending case that resulted in a mistrial that invoked a double jeopardy prohibition bar?

**D)** What type of relief or redress may a plaintiff in a criminal case seek (or receive) by a Court-- if the case is barred by Double Jeopardy Prohibition? If the plaintiff is barred from seeking relief how can a Court exercise its authority and gain jurisdiction to entertain a case in the plaintiff's favor?

**E)** Can a court by erroneous decision acquire or exercise jurisdiction in which, it does not have, and can a court deprive itself of jurisdiction that it does have? In other words--- is it permissible for a court to accidentally exercise



jurisdiction over a case that it does not have jurisdiction of, and can a court dismiss its own jurisdiction by refusing to offer redress and access to the courts pursuant to Article 1 Section 21 of the Florida Constitution? Does a court in a criminal case **have the authority** to determine redress for a plaintiff, enter a decree, ruling, judgement, or adjudicate **in a case the plaintiff has no “standing”**, and **has no jurisdiction over**? Without **the authority to determine redress**, render a decree, ruling, judgement, or adjudication upon the rights of a defendant, can a court utilize its own discretion to decide a case it is unsure it has jurisdiction over? What legal authority does a court in the lower tribunal have to entertain a case it has no jurisdiction over?

**F)** Does a court exceed “jurisdictional” limits if they order relief within the scope of an improper pleading? Is jurisdiction reserved when double jeopardy prohibition is invoked?

**G)** Abuse of process refers to the improper use of a criminal legal procedure for an unintended, malicious, or perverse reason. It is the malicious and deliberate misuse of regularly issued criminal court process that is not

justified by the underlying legal action. The following elements constitute the intentional tort of abuse of process: 1). The malicious and deliberate misuse or of regularly issued civil or criminal court process that is not justified by the underlying legal action. 2). The abuser of process is interested only in accomplishing some improper purpose similar to the proper object of the process. A wrongful use of processes such as unjustified arrest, unfounded criminal prosecution, are considered examples of abuse of process—**Are these assertions deemed true and correct?**

**H)** Subject matter jurisdiction has two elements, 1). The ability to hear a case 2). The ability to determine a judgement, decree, or adjudication and the term “jurisdiction” means a court’s authority to hear and decide a dispute, and procedural regulations that determine whether the authority is currently activated can fit within that definition—**Is this assertion interpreted as true and correct?**

**I)** Can a court initiate crucial confrontation, seek information, seek evidence, or request consent from a defendant, **after** a defendant invokes his right to counsel, in absence of counsel?

**J)** If a court were to successfully obtain consent for a declaration of a mistrial-- from a pro se defendant, **after** he has invoked his right to counsel-- is the consent admissible, is the consent required to be made “intelligently”, and is the “intelligent” consent required to be laid in detail **on the record**?

**K)** If a defendant requests for “standby counsel” in multiple pre-trial hearings and is denied those requests by a judge-- would it constitute as bad faith upon a judge, if a defendant invokes his right to counsel during trial and it becomes the result of the mistrial? What sanctions would make a judge accountable for their bad faith conduct?

**L)** Is a defendant required to be convicted **in violation** of a double jeopardy prohibition **before** he is **allowed to invoke** his constitutional protected right of double jeopardy prohibition-- and receive relief, redress, remedy, or protection of those rights on direct appeal?

**M)** Are constitutional rights only effective **after** disposition, post-convictions, and on direct appeal-- or can their protection be utilized **prior** to disposition during pre-trial detention (especially if it is fundamental)?

**N)** When a defendant is suffering an injury in violation of their Double Jeopardy Prohibition rights of the Florida Constitution, and files a Writ of Prohibition in the district court of appeals; Will the **denial** or **dismissal** of a Writ of a Prohibition **bar a petitioner access to the courts for redress of that injury** and be in violation of article I, section 21 of the Florida Constitution?

**O)** When a petitioner files a meritorious Writ of Prohibition in the Florida district court of appeals, expressing and demonstrating that the lower tribunal is in excess of its jurisdiction and in violation of The Florida Constitution, and in violation of the petitioner's double jeopardy rights therein— is the petitioner's pending case in the lower tribunal required to be disposed **before** he can receive redress of an injury, and required to first receive a conviction in excess of the lower tribunal's jurisdiction?

**P)** Does a repeated attempt to convict and re-prosecute a defendant for an alleged offense-- in violation of the Florida Constitution and Double Jeopardy Prohibition, subject a defendant to repeated embarrassment, expenses, ordeal and **compels** a defendant to live in a continuing state of

anxiety, and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty? Or is that assertion by the Supreme Court wrong? Would any other interpretation mean a defendant can be repeatedly charged and prosecuted indefinitely even though he cannot be convicted without requiring a reversal?

**Q)** Is Double Jeopardy Prohibitions in the Florida Constitution a fundamental protected right for a citizen? Is a defendant entitled to utilize the protection of Double Jeopardy **at any time or only after a conviction on direct appeal**?

**R)** Are the following case authorities: Webster v. State, 968 So.2d 125 (Fla. 4th DCA 2007), and Jackson v. State, 855 So.2d 178, 179 (Fla. 4th DCA 2003) rulings/grantal **certified true and correct**? If a petitioner has received a ruling inconsistent with these listed case authorities, what recourse may a petitioner receive to redress the issue?

**S)** What purpose would a Double Jeopardy Prohibition, protected right serve— if a defendant is required to become convicted of an offense **to receive redress in violation of that right** on direct appeal?

T) In the interests of justice-- If a court **intentionally** decides to intrude **or negligently** violate a defendant's constitutional rights after being adequately informed--What sanctions do they face?

U) In the interests of justice-- How will it be beneficial for the government, to knowingly intrude and violate a defendant's double jeopardy rights, have multiple trials, numerous proceedings, numerous motions, numerous writs, numerous complaints, numerous bar violations, numerous audits, lengthy appeals, and possible lawsuits on a case that cannot legally be proceeded on (knowingly)? Will this be considered "abuse of process", "malicious prosecution", or "both"? Or will this conduct render a government incompetent, and negligent?

V) In the interests of justice, to remove ambiguity within the law, to provide direct guidance, and to deter abuse through clear, precise, and unescapable language-- What remedy is a petitioner or defendant entitled to when a Florida district court of appeals makes a ruling clearly inconsistent with the law, yet is denied a rehearing, refused an opinion, or refused a certified a question of public importance? Are they stuck with an erroneous ruling inconsistent with the law? What sanctions do the Florida district court of

appeals face?

**W)** If a defendant or petitioner suffers any direct or collateral injuries by a court, whether intentionally or negligently—Is a defendant entitled to financial compensation due to the damages caused (if they lose property (car and apt/home), their job, their kids/family (under their care), their licenses, school debt interruption, ruin credit score, and in result of a courts misconducts results in a petitioner or defendant's mental health treatment whether through therapy, medication, etc., and mental anguish due to losing these things, or health issues that may not be properly accommodated while being erroneously placed in jail)?

**As grounds thereof, the petitioner states as follows:**

1. On November 06<sup>th</sup>, 2018, the petitioner/defendant Kevin Tyrell Beach was charged by information of battery due to an alleged incident that occurred on September 16<sup>th</sup>, 2018.
2. On November 15<sup>th</sup>, 2018, the petitioner/ defendant's twin brother Kenneth Rashaun Beach Jr. was served with a summons informing the petitioner/defendant to attend court on December 18<sup>th</sup>, 2018 which was later

transferred from North Satellite Courthouse to Central Courthouse and arraignment was reset for January 10<sup>th</sup>, 2019.

3. At arraignment on January 10<sup>th</sup>, 2019, as well as January 31<sup>st</sup>, 2019, the petitioner, Kevin Tyrell Beach, an indigent, layman, and pro se defendant requested standby counsel to assist him in abundance of caution, if he later decides that he is overwhelmed with the legalities and technicalities of his case. Judge Robert Diaz denied the petitioner/defendant's requests for standby counsel for whatever reasons, he felt were adequate. Standby counsel is to advise and aid a Defendant if, and when the Defendant requests help, and to be available to represent the Defendant in the event that termination of the Defendant's self-representation is necessary. As "standby counsel," the appointed counsel should continue to be involved in the trial process to the extent that a delay or continuance will not be required in the event that termination of the Defendant's self-representation is necessary. See Behr v. Bell, 646 So. 2d 837 – Fla: Dist. Court of Appeals, 1st Dist. 1994. A judge should use caution in denying standby counsel, because a defendant may waive the right to self-representation if the defendant later abandons his or her initial request to proceed pro se. Brown v. Wainwright, 665 F.2d 607,



611 (5th Cir. 1982). Bad faith is presented when standby counsel is denied upon request and later becomes the result of a mistrial

4. On March 20<sup>th</sup>, 2019, a trial occurred after a jury was impaneled and sworn in, by Judge Robert Diaz. The petitioner was unrepresented by an attorney throughout his trial.

5. During the trial the **petitioner invoked his right to an attorney**, after he struggled to present his case in its best presentable fashion.

6. The Assistant State Attorney requested the lower tribunal to conduct a Faretta Inquiry. The lower tribunal **refused** to conduct a Faretta Inquiry at that subsequent and crucial stage of the proceeding. The lower tribunal demonstrated his belief that a manifest necessity for a mistrial has not occurred in the case.

7. The lower tribunal thereafter initiated crucial confrontation with the petitioner/defendant and attempted to negotiate a plea bargain with the petitioner without an attorney present. The lower tribunal offered an adjudication followed by 20 days in Broward County Jail. The petitioner rejected the offer and asserted he wanted his adjudication to come from a

particular tribunal (jury). **The petitioner requested to finish the trial** with **an attorney** present so he can properly appeal if necessary, and the lower tribunal **denied that request**. The lower tribunal attempted to goad the layman petitioner into unintelligently-- consenting to a mistrial without the presence of an attorney. The lower tribunal presented the defendant a "Hobson Choice" **and refused to allow the petitioner, to invoke his right to Counsel before declaring a mistrial.**

8. The lower tribunal induced a declaration of a mistrial as the only alternative-- to remedy the petitioner's entitlement of his right to an attorney due to **his own bad faith** of denying the petitioner's request for standby counsel. **The lower tribunal erroneously declared a mistrial.**

9. The lower tribunal, nor the prosecution demonstrated a manifest necessity or objections to a mistrial, though they should have known the consequences of failure to do so, in accordance to the law.

10. The lower tribunal has failed to establish and demonstrated any legal and intelligent consent as required to declare a mistrial and remove the double

jeopardy prohibition bar. The lower tribunal attempted to illegally obtain consent from the petitioner after he invoked his right to counsel and the court failed to conduct a Faretta Inquiry, thus making any potential consent invalid. The court has also failed to provide intelligence to the record as required pursuant to State v. Olson 609 N.W.2d 293 (2000). A defendant that invokes his right to counsel— becomes protected by that right. **The Court and the State cannot initiate any crucial confrontation with a defendant without his attorney present. Any evidence obtained by the Court or the State-- in violation of this right cannot be used and is impermissible as a matter of law.** To invoke the right to counsel, a person must “unambiguously” request the presence of an attorney. When an accused invokes the right to a lawyer by requesting counsel; Neither the police nor the judge differentiate between constitutional sources of the right to counsel or announce which constitutional provision is affected at any given stage of the proceedings. There is no explanation, for example, that the right to counsel during interrogations may exist simultaneously under both section 9 and section 16 of the constitution. The right to this assistance obviously continues throughout the defendant's detention. When the initial restraint becomes a court case, the accused is then entitled under article I,

section 16 to a lawyer's assistance, not only during custodial interrogation but also throughout any and all necessary stages of the case. Once the right to counsel has attached and a lawyer has been requested or retained, the State may not initiate any crucial confrontation with the defendant on that charge in the absence of counsel throughout the period of prosecution. both section 9 and section 16 of the constitution. Evidence obtained by the State in contravention of these guidelines violate the Florida Constitution and may not be used by the State. See Traylor v. State, 596 So. 2d 957 - Fla: Supreme Court 1992. The Counsel Clause of the Florida Constitution is contained in Section 16 of our Declaration of Rights, which provides in part-- In all criminal prosecutions the accused shall, upon demand, ... have the right ... to be heard in person, by counsel or both... .Art. I, § 16, Fla. Const. Our state clause embodies an express right to choose the manner of representing oneself — either pro se or through counsel — against criminal charges. In *Cutts v. State*, 54 Fla. 21, 45 So. 491 (1907), this Court ruled that "[e]very person accused of crime has a right to have counsel to aid him in his defense, but no one is compelled to employ counsel." A defendant is entitled to decide at each crucial stage of the proceedings whether he or she requires the assistance

of counsel. At the commencement of each such stage, an unrepresented defendant must be informed of the right to counsel and the consequences of waiver. Any waiver of this right must be knowing, intelligent, and voluntary, and courts generally will indulge every reasonable presumption against waiver of this fundamental right.

Where the right to counsel has been properly waived, the State may proceed with the stage in issue; but the waiver applies only to the present stage and must be renewed at each subsequent crucial stage where the defendant is unrepresented. The text of our Florida Constitution begins with a Declaration of Rights — a series of rights so basic that the framers of our Constitution accorded them a place of special privilege. Each right is, in fact, a distinct freedom guaranteed to each Floridian against government intrusion. Each right operates in favor of the individual, against government. The Sixth Amendment guarantees the assistance of counsel in criminal proceedings. If a defendant can't afford to hire an attorney, the court will appoint one at the government's expense. A mistrial is required as a matter of law to be justified and consensual -- in order to remove the jeopardy attached in a trial of a particular tribunal. The law requires a manifest necessity stated and the burden of it proven in order to remove

the jeopardy or at least a showing that the defendant was never in jeopardy. **The lower tribunal has failed to present, demonstrate, or execute any of the legal requirements before declaring a mistrial, thus failed to remove the double jeopardy prohibition bar to re-prosecute the petitioner. The State failed to object thus losing standing as a plaintiff in the case presented herein, leaving the lower tribunal without subject matter jurisdiction to exercise authority and determine redress and preservation for the plaintiff.**

11. The lower tribunal had other alternatives to consider before declaring a mistrial such as removing the jeopardy pursuant to Florida Rules of Criminal Procedure Rule 3.111 (b), if there were no other alternatives it would have been at fault to the judge by denying counsel and failure to protect the petitioner/ defendant's rights.

12. On January 22<sup>th</sup>, 2021 the petitioner filed a 21-page petition for a Writ of Prohibition as well as an 18-page appendix of the petition-- including evidence exhibits of the record demonstrating an erroneous declaration of a mistrial and the lower tribunal is in excess of its jurisdiction.

13. The petitioner sought access to this court (4<sup>th</sup> DCA), to prevent impairment and delay of his legal claims of merit -- requesting redress of his injury in his petition (Writ of Prohibition), notifying this court that his constitutional rights are being intruded upon, violated, and in need of redress (*of his double jeopardy rights*). The lower tribunal would be in excess of its jurisdiction without an issuance of a Writ of Prohibition and there is no other alternative to prevent the lower tribunal from exercising authority it does not have.

14. On February 16<sup>th</sup>, 2021, this Court entered an order **dismissing** the petitioner's Writ of Prohibition, **thus denying the petitioner access** to the courts **to receive redress, violating the petitioner's constitutional rights, and double jeopardy protection relief**. The order suggested an assertion that the petitioner is required to get convicted **before his rights are invoked** and **only if he files a direct appeal**. Any other interpretation would be a **moot** issue if the petitioner was acquitted. This order is in contradiction with the constitutions (Florida and United States), as well as cited case authorities. *See Exhibit A, B, and C.*

15.If the purpose of a double jeopardy prohibition bar in the Florida Constitution (and U.S) was designed **to prevent** a defendant from being **being “twice tried”**, a second re-prosecution of a defendant, in which is protected by this right-- would essentially invalidate this constitutional restriction. The petitioner is unaware of any other available remedy to *receive relief from a re-prosecution* and governmental intrusion against his double jeopardy rights presented within the Florida Constitution as well as the United States Constitution. The petitioner doesn't believe he is required to be convicted before he can invoke protection and redress on a direct appeal, when it could have been adequately prevented via Writ of Prohibition. The petitioner is unaware of any legal authority that agrees with violating his double jeopardy rights. *(For example: if a defendant was acquitted of battery in trial, than a couple months later he is charged again and re-prosecuted for the same battery charge, and has to go back to jail, bond out again, get a lawyer again, just to afford the state a second chance to attempt or obtain an erroneous conviction-- **only** for the defendant to file a direct appeal requesting protection of a double jeopardy right he was already protected by, just to have the case reversed on direct appeal. This example-based on this courts assertion-- would mean this entire process can*



essentially happen again and again indefinitely, regardless if the conviction will require a reversal.) That interpretation clearly is not within the purview of the law, yet clearly seems to be what this court is asserting. This court's interpretation of the law would essentially create a dilemma that can easily lead to abuse of process. "Where a clear violation of a right is made to appear an appellate court will issue the writ of prohibition to prevent an unreasonable violation of the right." See Leonard v. McIntosh, 237 So. 2d 809 - Fla: Dist. Court of Appeals, 4th Dist. 1970.

16. Art. I, § 21, of the Florida Constitution allows everyone the right of access to courts without sale, **denial**, or delay of justice. This is a self-executing right afforded to all, regardless of financial status. Court is compelled to "be open to every person", whether one can afford an attorney or not. This courts decision presents an unconstitutional denial of access to the courts for the redress of the petitioner's injuries suffered through a violation of double jeopardy rights.

17. The petitioner has “standing” in his petition and is suffering an injury by the Courts, in which he seeks remedy and relief pursuant to rule 9.100, 9.030(c)(2) and (c)(3), and 9.220 of the Florida Rules of Appellate Procedures and petitions this court a Writ of Prohibition. Without the granting of the defendant’s petition, the petitioner suffers a denial of access to the courts and impairs his ability to receive proper redress and relief.

18. Prohibition will be invoked only in emergency cases to forestall an *impending present injury* where person seeking writ has no other appropriate and adequate legal remedy. Furthermore, only when damage is likely to follow the inferior court’s acting without authority of law or in excess of jurisdiction will the writ issue. *See English v. McCrary, 1977.*

19. There is no lawful basis for this court’s failure to issue a Writ of Prohibition for this case presented herein. This case firmly fits the criteria for an appropriate issuance as a matter of law. The petitioner is suffering an injury and intrusion of his double jeopardy rights. This court appears to be in agreeance with the violation of the petitioner’s rights. This court has no authority or discretion to deny a petitioner access to the court on meritorious

claims. A dismissal of the writ suggests that this court **refuses to grant or deny the petitioner relief in his claim**. It thus remains the duty of this court who is eligible and competent, to sit in a cause, to exercise its judicial functions therein, and to make all necessary orders and decrees pertaining thereto, regardless of its personal feelings of delicacy or other considerations, to sit and render judgment in the cause. This court shall be competent enough to accurately assess that the lower tribunal has no legal authority, nor jurisdiction to exercise in this cause. This court shall be competent enough to understand that a re-prosecution in the lower tribunal violates the petitioner's double jeopardy rights pursuant to Article 1, Section 9 of the Florida Constitution and shall not be "**twice put in jeopardy**", this also extends federally to the United States Constitution 5<sup>th</sup> Amendment. The petitioner believes this court to be one of competence, and refuses to believe this court would intentionally, nor negligently obviate the purview of the law. This court's dismissal of the petitioner's Writ of Prohibition contradicts and nullifies the law. This court's decree suggests that a criminal possesses an option to nullify the law, rules, and procedures at their own convenience *as well*. This conduct sets a bad example for all in the interests of justice and shall be corrected. This conduct certainly denies the petitioner access to the

courts to remedy the demonstrated injuries in his petition and provide relief of his invoked double jeopardy rights.

20. The petitioner expresses a belief based on the Florida Constitution, his rights therein, and guidance for a clear demonstration of those rights, that this issue is of exceptional importance. Article 1, Section 2 in the Florida Constitution promises the petitioner protection of those rights. In *Traylor v. State*, 596 So.2d 957 Florida Supreme Court (1992) expresses these rights [enumerated in the Declaration of Rights] curtail and restrain the power of the State. It is more important to preserve them, even though at times a guilty man may go free, than it is to obtain a conviction by ignoring or violating them. The end does not justify the means. Might is not always right. Under our system of constitutional government, **the State should not set the example of violating fundamental rights guaranteed by the Constitution to all citizens in order to obtain a conviction.**

21. In addition, the petitioner, expresses a belief, based on numerous supporting authorities pursuant to Webster v. State, 968 So.2d 125 (Fla. 4th DCA 2007), and Jackson v. State, 855 So.2d 178, 179 (Fla. 4th DCA 2003). In which have issued Writs of Prohibition after a presented demonstration—that the lower tribunal has been in excess of jurisdiction. The petitioner believes that this panel’s decision in this cause is contrary to its prior decisions in its own district, as well as others. The purpose therein Art. I, § 9 of the Florida Constitution appears to be illusory based on this courts decision. A dismissal of the petitioner’s Writ of Prohibition clearly denies him access to the courts and his ability to receive relief and remedy of his invoked and protected double jeopardy rights pursuant to Art. I, § 21, of the Florida Constitution. To rule in opposition would make it appear as if the 4<sup>th</sup> District Court of Appeals, operates under a separate Constitution in contradiction of the one it apparently rules under.

**22.English v. McCrary, 348 So. 2d 293 - Fla: Supreme Court 1977** by

review and opinion seems to provide guidance of how a writ should be properly utilized and responded to by stating the following:

**"The courts shall be open to every person for redress of any injury"**

**"no cause shall be dismissed because an improper remedy has been sought."**

"In sum, I would provide a rapid means of access to appellate courts for the problem which cropped up in this case, and I prefer to call that means of access "prohibition" rather than wait until it can be denominated by some study committee as "appeal", "certiorari" or "review"."

"My conclusion that the remedy of prohibition will lie in civil as well as **criminal cases** to test the exclusion of the press and the public from judicial proceedings brings me to the second issue in this case — whether on the facts known to the district court a response should have been sought from the trial judge or, if no response was obtained, whether the writ of prohibition should have issued. The obvious answer to these questions is that a response should have been sought, **and if not obtained then prohibition should have been ordered.**"

23. The dismissal of the petitioner's Writ of Prohibition clearly denies him justice, impairs his ability to make a claim, and prevents him access to the Court to properly redress his injuries from an intrusion on his invoked double jeopardy rights and deviates from the instructions provided in

**English v. McCrary, 348 So. 2d 293 - Fla: Supreme Court 1977**

24. The petitioner cannot come to a reasonable conclusion, in accordance with the law, based on the conduct presented and demonstrated in the totality of circumstances-- within his petition, supporting caselaw authorities, and the language presented in the Florida Constitution—as to why his petition for Writ of Prohibition was dismissed. The petitioner is unaware of any legal authority that concurs with this court's decision.

25. A rehearing should be granted under the totality of circumstances presented. Should this Court deny rehearing, a written opinion is requested so that the petitioner may seek review of the decision, pursuant to Florida Rule of Appellate Procedure 9.030 2(b).

26. A written opinion is also necessary to provide an explanation for the apparent deviation from all presented Florida Cases, and the purview of Art. I, § 9, of the Florida Constitution. Such opinion is necessary to guide both the lower courts, the petitioner, pro se litigants, as well as the public. Therefore, the same questions of law are likely to recur (especially with pro se litigants). Also, an opinion as to why the petitioner should legally be denied access to the courts in contradiction to Art. I, § 21, of the Florida Constitution.

27. A Judge is required to be faithful to the law, respect the law, and comply with the law. To hold a directive or decree in contradiction to the law and violates numerous canons. This conduct is subject to disciplinary action. Disciplinary action will be sought by the petitioner if the misconduct is refused to be corrected and fall in compliance with the law. *See In re The Florida Bar—Code of Judicial Conduct ,281 So.2d 21 – Fla: Supreme Court 1973.* Jurisdiction stems from Section 23, Article V, Florida Constitution, F.S.A., which provides in part that: "The supreme court shall have exclusive jurisdiction over the admission to the practice of law and the discipline of persons admitted. CANON 1-A JUDGE SHOULD



UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE

JUDICIARY: An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing,

maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective. CANON 2-A JUDGE SHOULD AVOID

IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL

HIS ACTIVITIES: **A). A judge should respect and comply with the law**

**and should conduct himself at all times in a manner that promotes**

**public confidence in the integrity and impartiality of the judiciary.** **B).**

A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness. CANON 3-A JUDGE SHOULD PERFORM THE DUTIES OF

HIS OFFICE IMPARTIALLY AND DILIGENTLY: The judicial duties of a judge take precedence over all his other activities. His judicial duties

include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply: A. Adjudicative

Responsibilities-(1) **A judge should be faithful to the law and maintain professional competence in it.** He should be unswayed by partisan

interests, public clamor, or fear of criticism. (2) **A judge should maintain**

**order and decorum in proceedings before him.**(3) **A judge should be**

**patient, dignified, and courteous to litigants, jurors, witnesses,**

**lawyers, and others with whom he deals in his official capacity, and**

**should require similar conduct of lawyers, and of his staff, court**

**officials, and others subject to his direction and control.** (4) A judge

should accord to every person who is legally interested in a proceeding, or

his lawyer, **full right to be heard according to law,** and, except as

authorized by law, neither initiate nor consider ex parte or other

communications concerning a pending or impending proceeding. A judge,

however, may obtain the advice of a disinterested expert on the law

applicable to a proceeding before him if he gives notice to the parties of the

person consulted and the substance of the advice, and affords the parties

reasonable opportunity to respond. CANON 4- A JUDGE MAY ENGAGE

IN ACTIVITIES TO IMPROVE THE LAW, THE LEGAL SYSTEM,  
AND THE ADMINISTRATION OF JUSTICE: A judge, subject to the  
proper performance of his judicial duties, may engage in the following  
quasi-judicial activities, if in doing so he does not cast doubt on his  
capacity to decide impartially any issue that may come before him.

**28. Finally, the petitioner requests this Court to certify the presented  
questions of great public importance:**

A) When a double jeopardy prohibition bar is invoked in a criminal case, will a  
plaintiff **lack adequate “standing”** (*in a criminal case*)-- to present  
**adequate subject matter jurisdiction** before a court? When a double  
jeopardy prohibition bar is in place, does a plaintiff in a criminal case lose  
“standing” of its stake in receiving redress (*in regards to the outcome of a  
case*)-- in which a court can no longer proceed on legally? If not, is there a  
justiciable controversy for a court to determine the redress, enter a decree,  
ruling, judgement, or adjudication **in favor** of the plaintiff? Will a court still  
have a proper cause of action placed before it? Will subject matter  
jurisdiction remain-- to proceed in the case, and can a court exercise its

judicial power legally? Can Subject Matter Jurisdiction be waived in a criminal proceeding? If so, How?

B) When double jeopardy prohibition bars punishment **and re-prosecution** of a case-- how can a judge obtain subject matter jurisdiction over the case? Can a court enter a judgment, decree, or adjudication over a case that it is prohibited from? What type of jurisdiction would the lower tribunal possess in order to exercise its authority? What justiciable controversy would they have? If the purpose of Article 1, Section 9, a double jeopardy prohibition bar in the Florida Constitution was designed to prevent a defendant from being being "twice tried", would a second prosecution of a defendant who is protected by this right invalidate this constitutional restriction?

C) What relief, redress, or remedy is a defendant entitled to, if he is once again placed in jeopardy-- in violation of his double jeopardy rights within Article 1, Section 9 of the Florida Constitution **prior** to disposition of his pending case that resulted in a mistrial that invoked a double jeopardy prohibition bar?

D) What type of relief or redress may a plaintiff in a criminal case seek (or receive) by a Court-- if the case is barred by Double Jeopardy Prohibition? If the plaintiff is barred from seeking relief how can a Court exercise its authority and gain jurisdiction to entertain a case in the plaintiff's favor?

E) Can a court by erroneous decision acquire or exercise jurisdiction in which, it does not have, and can a court deprive itself of jurisdiction that it does have? In other words--- is it permissible for a court to accidentally exercise jurisdiction over a case that it does not have jurisdiction of, and can a court dismiss its own jurisdiction by refusing to offer redress and access to the courts pursuant to Article 1 Section 21 of the Florida Constitution? Does a court in a criminal case **have the authority** to determine redress for a plaintiff, enter a decree, ruling, judgement, or adjudicate **in a case the plaintiff has no "standing", and has no jurisdiction over?** Without **the authority to determine redress**, render a decree, ruling, judgement, or adjudication upon the rights of a defendant, can a court utilize its own discretion to decide a case it is unsure it has jurisdiction over? What legal authority does a court in the lower tribunal have to entertain a case it has no jurisdiction over?

**F)** Does a court exceed “jurisdictional” limits if they order relief within the scope of an improper pleading? Is jurisdiction reserved when double jeopardy prohibition is invoked?

**G)** Abuse of process refers to the improper use of a criminal legal procedure for an unintended, malicious, or perverse reason. It is the malicious and deliberate misuse of regularly issued criminal court process that is not justified by the underlying legal action. The following elements constitute the intentional tort of abuse of process: 1). The malicious and deliberate misuse or of regularly issued civil or criminal court process that is not justified by the underlying legal action. 2). The abuser of process is interested only in accomplishing some improper purpose similar to the proper object of the process. A wrongful use of processes such as unjustified arrest, unfounded criminal prosecution, are considered examples of abuse of process—**Are these assertions deemed true and correct?**

**H)** Subject matter jurisdiction has two elements, 1). The ability to hear a case 2). The ability to determine a judgement, decree, or adjudication and the term “jurisdiction” means a court’s authority to hear and decide a dispute,

and procedural regulations that determine whether the authority is currently activated can fit within that definition—Is this assertion interpreted as true and correct?

- I) Can a court initiate crucial confrontation, seek information, seek evidence, or request consent from a defendant, after a defendant invokes his right to counsel, in absence of counsel?
- J) If a court were to successfully obtain consent for a declaration of a mistrial-- from a pro se defendant, after he has invoked his right to counsel-- is the consent admissible, is the consent required to be made “intelligently”, and is the “intelligent” consent required to be laid in detail on the record?
- K) If a defendant requests for “standby counsel” in multiple pre-trial hearings and is denied those requests by a judge-- would it constitute as bad faith upon a judge, if a defendant invokes his right to counsel during trial and it becomes the result of the mistrial? What sanctions would make a judge accountable for their bad faith conduct?

L) Is a defendant required to be convicted **in violation** of a double jeopardy prohibition **before** he is **allowed to invoke** his constitutional protected right of double jeopardy prohibition-- and receive relief, redress, remedy, or protection of those rights on direct appeal?

M) Are constitutional rights only effective **after** disposition, post-convictions, and on direct appeal-- or can their protection be utilized **prior** to disposition during pre-trial detention (especially if it is fundamental)?

N) When a defendant is suffering an injury in violation of their Double Jeopardy Prohibition rights of the Florida Constitution, and files a Writ of Prohibition in the district court of appeals; Will the **denial** or **dismissal** of a Writ of a Prohibition **bar a petitioner access to the courts for redress of that injury** and be in violation of article I, section 21 of the Florida Constitution?

O) When a petitioner files a meritorious Writ of Prohibition in the Florida district court of appeals, expressing and demonstrating that the lower tribunal is in excess of its jurisdiction and in violation of The Florida



Constitution, and in violation of the petitioner's double jeopardy rights therein— is the petitioner's pending case in the lower tribunal required to be disposed before he can receive redress of an injury, and required to first receive a conviction in excess of the lower tribunal's jurisdiction?

**P)** Does a repeated attempt to convict and re-prosecute a defendant for an alleged offense-- in violation of the Florida Constitution and Double Jeopardy Prohibition, subject a defendant to repeated embarrassment, expenses, ordeal and compels a defendant to live in a continuing state of anxiety, and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty? Or is that assertion by the Supreme Court wrong? Would any other interpretation mean a defendant can be repeatedly charged and prosecuted indefinitely even though he cannot be convicted without requiring a reversal?

**Q)** Is Double Jeopardy Prohibitions in the Florida Constitution a fundamental protected right for a citizen? Is a defendant entitled to utilize the protection of Double Jeopardy **at any time** or only after a conviction on direct appeal?

R) Are the following case authorities: Webster v. State, 968 So.2d 125 (Fla. 4th DCA 2007), and Jackson v. State, 855 So.2d 178, 179 (Fla. 4th DCA 2003) rulings/grantal **certified true and correct**? If a petitioner has received a ruling inconsistent with these listed case authorities, what recourse may a petitioner receive to redress the issue?

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“malicious prosecution”, or “both”? Or will this conduct render a government incompetent, and negligent?

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these things, or health issues that may not be properly accommodated while being erroneously placed in jail)?

**WHEREFORE**, the reasons presented herein, the petitioner respectfully requests this Honorable Court to grant a rehearing, or in the alternative issue a written opinion, certify the presented questions of great public importance herein, and any other remedies this court deems necessary and just, under the totality of circumstances. So many questions arise from this Court's decision to dismiss the petitioner's Writ of Prohibition and is in contradiction of many case authorities, and constitutions (both Florida and U.S.). A written opinion is extremely necessary to clear up any present deviations of the law. These questions are in dire need of certification to make this court's decision appear reasonable, unbiased, and accordance with the law. Refusal to at least certify 1 question out of 23 questions would appear to abuse your authority, deny access, and demonstrate a strong bias for pro se litigants, and expose the lack within the interests of justice to prevent these questions from recurring, and provide guidance as to how this court's decision in this cause is somehow in accordance with the law to disturb any confusion that may mislead anyone interested in an adequate conclusion.

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the forgoing has been e-filed through the filing portal and serviced to respondents and all participating parties, in regard to petition: The Honorable Fred Seraphin: fseraphin@jud11.flcourts.org, his Judicial Assistant- Marie Thompson: mthompson@jud11.flcourts.org, Assistant State Attorneys- Erica Arboleya: earboleya@sao17.state.fl.us, John Resnik: jresnik@sao17.state.fl.us, Counsel Lisa Stewart: lisavlaw@gmail.com or lstewart@rc-4.com, and her Secretary Daniel Roca: droca@rc-4.com of Broward County, Florida, for lower tribunal Case # 18002120MM20A, on February 22<sup>nd</sup>, 2021, and the Judges for review on behalf of the 4<sup>th</sup> District Court of Appeals: The Honorables: Jonathan David Gerber (*Bar #982539*): gerberj@flcourts.org, Burton Cornell Conner (*Bar #254551*): connerb@flcourts.org, Edward L Artau (*Bar #764353*): artaue@flcourts.org.

**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that the font used in this motion, Times New Roman 14-point, complies with Fla. R. App.P.9.100 (I).

/s/ Kevin Tyrell Beach

Respectfully Submitted,  
Kevin Tyrell Beach  
2092 Champions Way  
North Lauderdale FL, 33068  
\*Email: beachkevin10@yahoo.com  
Phone: 954-210-2008  
/S/Kevin Beach

# EXHIBIT A:

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT, 110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401

February 16, 2021

**CASE NO.: 4D21-0546, 4D21-0663**

L.T. No.: 18002120MM20A,  
18002120MM10A,  
CACE21-000127

KEVIN TYRELL BEACH

v. 17TH JUDICIAL CIRCUIT COURT, and  
STATE OF FLORIDA

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Appellant / Petitioner(s)

Appellee / Respondent(s)

**BY ORDER OF THE COURT:**

ORDERED that this court consolidates the above cases for review. The petitions for writ of prohibition are dismissed. Petitioner may raise the claims on direct appeal following disposition of the pending lower court case LT18-2120MM.

GERBER, CONNER and ARTAU, JJ., concur.

Served:

cc: Attorney General-W.P.B.  
Clerk Broward

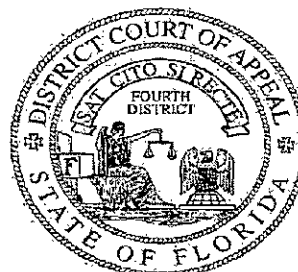
Kevin Tyrell Beach  
Hon. Robert Diaz

State Attorney-Broward

kk



**LONN WEISSBLUM, Clerk**  
Fourth District Court of Appeal





# EXHIBIT B:

**Additional material  
from this filing is  
available in the  
Clerk's Office.**